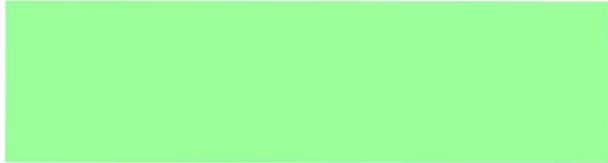




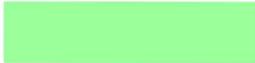
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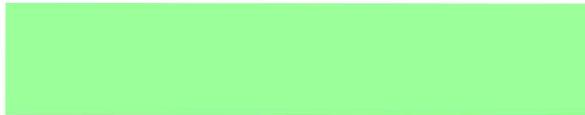
Office: VERMONT SERVICE CENTER

FILE: 

IN RE:

Petitioner:

Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (“AAO”) on appeal. The AAO will dismiss the appeal.

The petitioner, a Connecticut corporation formed in June 1985, is a religious organization. The petitioner filed this nonimmigrant visa petition seeking to classify the beneficiary pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (“Act”), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien with extraordinary ability in the field of business. The petitioner seeks to employ the beneficiary in the position of Event and Creative Media Director for a period of three years.

After issuing a request for evidence (RFE) and then considering the evidence of record, the acting director denied the petition, finding that the petitioner failed to establish that the beneficiary qualifies as an alien of extraordinary ability in business.

On appeal, the petitioner asserts that sufficient evidence establishes the beneficiary’s qualification as an alien with extraordinary ability in the field of business, and that the acting director erred in her application of the law and her analysis of the evidence in this case.

### **Extraordinary Ability in Business**

The sole issue is whether the petitioner submitted evidence to establish that the beneficiary qualifies as an alien with extraordinary ability in the field of business, specifically, whether the evidence satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(A), or at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

#### **A. The Law**

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part: “*Extraordinary ability in the field of science, education, business, or athletics* means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.”

#### **B. Evidentiary Criteria**

The sole issue is whether the petitioner submitted evidence to establish that the beneficiary satisfies the evidentiary requirements at 8 C.F.R. 214.2(o)(3)(iii). A petitioner may establish eligibility for O-1 classification by submitting documentary evidence that the beneficiary has received a major, internationally recognized award in the particular field, such as the Nobel Prize. 8 C.F.R. § 214.2(o)(3)(iii)(A). The petitioner does not assert and the record does not establish eligibility under this provision for a major award. Thus, the petitioner must establish the beneficiary’s

eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B), or, if these criteria do not readily apply to the beneficiary's occupation, submit comparable evidence under 8 C.F.R. § 214.2(o)(3)(iii)(C).

The submission of evidence relating to at least three criteria does not, in and of itself, establish eligibility for O-1 classification. 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994); *cf. Kazarian v. USCIS*, 596 F.3d 1115 (9<sup>th</sup> Cir. 2010)(discussing a two-part review where the evidence is first counted and then, if qualifying under at least three criteria, considered in the context of a final merits determination).

The petitioner claims to have met the criteria listed at 8 C.F.R. § 214.2(o)(3)(iii)(B) subparagraphs (3), (4), and (5).<sup>1</sup> In addition, the petitioner claims eligibility through comparable evidence under 8 C.F.R. § 214.2(o)(3)(iii)(C).

In denying the petition, the acting director determined that the evidence submitted did not meet any of these criteria. After careful review of the record, and for the reasons discussed herein, the petitioner has not established eligibility under any of the evidentiary criteria under 8 C.F.R. § 214.2(o)(3)(iii)(B).

*Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation*

In general, in order for published material to meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), it must be "about" the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the [REDACTED] nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>2</sup>

The petitioner has submitted one article from the website [REDACTED] published on April 27, 2012. The article, [REDACTED] is about a live band competition in 2012 in Malaysia, [REDACTED], where the beneficiary acted as one of the judges. The beneficiary is briefly mentioned in the article. The acting director determined that the above-referenced evidence was insufficient to meet the plain language of the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3). Specifically, the acting director observed that this article is not primarily "about" the beneficiary; rather, it is primarily "about" the [REDACTED]

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<sup>1</sup> We will not discuss the remaining criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), (2), (6), (7), and (8) in this decision.

<sup>2</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, would not have significant national distribution.

event. In addition, the acting director observed that the petitioner did not provide evidence to show the circulation of the publication, to establish that such publication is a professional or major trade publication or major media.

The acting director determined that the petitioner did not establish eligibility for this criterion. The petitioner did not contest the findings of the acting director for this criterion or offer additional arguments on appeal. Therefore, the petitioner abandoned this issue. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (finding the plaintiff's claims to be abandoned as he failed to raise them on appeal).

Based on the foregoing, the record supports the acting director's determination that the petitioner has not submitted evidence that meets the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

*Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought*

To meet the fourth criterion, the petitioner must submit evidence of the beneficiary's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought. 8 C.F.R. § 214.2(o)(3)(iii)(B)(4).

The petitioner has submitted photographs about a live band competition held in 2011 and 2012 in Malaysia, and promotional materials from the events which briefly mention the beneficiary as one of the judges, describing him as a "professional musician."

In addition, the petitioner submitted a letter from Chief Executive Officer ("CEO"), a management company in Malaysia. Mr. stated that, based upon the beneficiary's reputation as a singer and musician, he convinced the beneficiary to serve as a judge for two seasons of the live band competition.

However, performing in a live band competition is not an allied field to the beneficiary's field of endeavor of event planning. The mere fact that both the live band competition and event planning involve music in some way does not establish that they constitute the same or an allied field of endeavor. The evidence of record does not show that the beneficiary has ever formally judged the work of others in the same or an allied field, as required by the regulations.

The acting director determined that the petitioner did not establish eligibility for this criterion. The petitioner did not contest the findings of the acting director for this criterion or offer additional arguments on appeal. Therefore, the petitioner abandoned this issue. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (finding the plaintiff's claims to be abandoned as he failed to raise them on appeal).

Based on the foregoing, the record supports the acting director's determination that the petitioner has not submitted evidence that meets the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4)

*Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field*

Under this criterion, the petitioner asserted the following:

One of [the beneficiary's] original contributions has been the creation and production of the largest Malaysian rock band competition and event, "Passport to Fame: The Battle of the Bands." In addition . . . [the beneficiary] also planned and executed some of the most prominent, public, and successful concerts in Malaysia and the region. . . Within the religious community in Malaysia and beyond, [the beneficiary] is considered an extraordinarily gifted and masterful event planner and manager . . . In addition, [the beneficiary] has authored an extraordinarily unique and inventive worship team manual – the first of its kind in Malaysia – which has become the go-to guide for religious event planning and management in Malaysia and the region.

The petitioner submitted several letters of support from the beneficiary's professional contacts. We cite representative examples here.

At the time of filing, the petitioner submitted a letter dated May 2, 2013, from [redacted] owner and CEO for [redacted], Malaysia, an event management company. Mr [redacted] states:

[redacted] is the sole organizer of the [redacted] the largest live band competition in Malaysia. The idea for this competition emerged when [the beneficiary] and I sat over coffee and discussed the music industry in Malaysia. [The beneficiary] shared with me his vision for the concept of the [redacted] which thrilled and excited me from the beginning. Knowing [the beneficiary] as a successful and highly regarded singer, musician, music event planner, I was sold. . . .

[The beneficiary] persuaded some major music sponsors in Malaysia, including [redacted] the biggest Malaysian [redacted] business company, and [redacted] the biggest Malaysian [redacted] producer, to sponsor this event. In addition, [the beneficiary] attracted several other sponsors, including [redacted] . . . [redacted] . . . and [redacted] . . . , who covered our write ups, as well as [redacted]

[The beneficiary] came up with the name, [redacted] formed a team, and took the lead in organizing the tour (venues, logistic, promotions, sponsors & equipment). The promotion and publicity through [the beneficiary's] group of contacts (singers and musicians, recording and jamming studios, and music stores and bistros) resulted in 48 bands applying for the audition. . . .

As the competition became more successful, more sponsors expressed interest in joining . . . . The response and excitement caused the sponsors to request “Season 2” and the event was featured in . . . . Thousands of people attended the events and shows . . . .

After consulting [the beneficiary], we agreed to do the next season in exactly the format that [the beneficiary] had designed and structured. Season 2 was organized by my team simply because [the beneficiary] pursued his calling and had to travel to perform his ministerial duties. However, I booked him to sit in as a judge for Season 2 because of the response from the public. The competition was an extraordinary success . . . It has been a great loss, for me and my team, not having [the beneficiary] participate in Season 3 . . .

I have no hesitation in affirming [the beneficiary’s] extraordinary abilities as an event manager, producer, and musician and certainly one of the best in Malaysia and the region.

The petitioner also submitted a letter dated May 3, 2013, from [redacted] founder and CEO of [redacted] Malaysia, a television production company. Mr. [redacted] states that he has known the beneficiary for six years and states that the beneficiary “is an extraordinarily talented event manager and producer and musician.”

In addition, the petitioner submitted a letter dated April 29, 2013, from [redacted] Principal of the [redacted] Malaysia, who states he came to know the beneficiary when he attended the school from 2010 to 2012. Reverend [redacted] states that during the time the beneficiary was a student at the school, he also served as the school’s worship leader, and that the beneficiary “revolutionized our worship department by holding auditions and training workshops both corporately and individually with musicians and singers.” He also states:

[The beneficiary’s] special gift is team-building, identifying talent and stretching people beyond what they perceive are their limits.

During the two years with the school, [the beneficiary] was absolutely invaluable and left behind an infrastructure to build upon. Among other things, he developed and wrote a worship training manual that we still use today. Because of him, we have audition, training and workshop procedures in place as well as practice schedules.

Although Reverend [redacted] states that the [redacted] continues to use the beneficiary’s worship training manual, the petitioner has not provided evidence to support Mr. [redacted]’s assertion that the worship training manual “has become the go-to guide for religious event planning and management in Malaysia and the region.” For example, the petitioner did not submit letters from independent entities affirming their use of the manual.

The petitioner further submitted a letter dated April 20, 2013, from [redacted], a Malaysian [redacted] Mr. [redacted] states that the beneficiary “has been my mentor for the last two years. He was my

worship pastor in [REDACTED]. He states that the beneficiary “is an extraordinary musician, producer, and event manager” and “also demonstrated he was a man of many talents by organizing and running many successful major music events.”

In the request for evidence, the acting director noted that the petitioner’s evidence failed to establish that the beneficiary has made an original business-related contribution of major significance in this field. In response to the RFE, the petitioner submitted four additional testimonials letters as “comparable evidence,” considered below under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(C). The acting director determined that the evidence submitted was insufficient to satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

Upon review, the preceding letters of recommendation demonstrate that the beneficiary’s work has earned the respect and admiration of those with whom he has collaborated and consulted, but these letters do not establish that he has made original business-related contributions of major significance in his field.

According to the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5), an alien’s contributions must be not only original but of major significance. The phrase “major significance” is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3<sup>rd</sup> Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003). While the petitioner is admired for his skills in the field of event planning and has worked on projects that benefited his clients, there is no evidence demonstrating that he has made original contributions of major significance in his field. For example, the record does not indicate the extent of the petitioner’s influence on others in his field nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. Regardless of the field, the plain language of the phrase “contributions of major significance in the field” requires evidence of an impact beyond one’s employer and clients or customers. *Cf. Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at \*8 (D.D.C. Dec. 16, 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole). Without extensive documentation showing that the beneficiary’s work has been unusually influential, or has otherwise risen to the level of original contributions of major significance, the petitioner has not established that he meets this criterion.

The acting director determined that the petitioner did not establish eligibility for this criterion. The petitioner did not contest the findings of the acting director for this criterion or offer additional arguments on appeal. Therefore, the petitioner abandoned this issue. *See Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (finding the plaintiff’s claims to be abandoned as he failed to raise them on appeal).

Based on the foregoing, the petitioner has failed to establish eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

*If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility*

The petitioner also submitted evidence under the “comparable evidence” provision at 8 C.F.R. § 214.2(o)(3)(iii)(C). In particular, the petitioner asserted that the beneficiary’s achievements of assisting in planning and managing the events of a 2008 campaign for state assembly of a Malaysian politician, organizing and managing the October 2012 golf competition of a Malaysian tourism company and managing the petitioner’s March 2013 Good Friday Worship Celebration should all be considered comparable evidence. Additionally, the petitioner submitted testimonial letters regarding these events as comparable evidence.

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) provides that an alien of extraordinary ability in the fields of science, education, business or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of receipt of a major internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), or by submitting evidence to satisfy at least three of the eight forms of documentation set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B). While the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) provides that comparable evidence “may” be submitted, in contrast, 8 C.F.R. § 214.2(o)(3)(iii) states that an alien of extraordinary ability in the fields of science, education, business, or athletics “must” demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence meeting at least three of the regulatory criteria. It is clear from the use of the word “must” in 8 C.F.R. § 214.2(o)(3)(iii), as opposed to the word “may” in 8 C.F.R. § 214.2(o)(3)(iii)(C), that the rule, not the exception, is that the petitioner is required to submit evidence to meet at least three of the regulatory criteria. Hence, the petitioner must first establish that the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary’s occupation. Then, only if the petitioner is able to establish that the regulatory criteria do not readily apply to the beneficiary’s occupation, may USCIS consider the comparable evidence. It is the petitioner’s burden to explain both: (1) why the regulatory criteria are not readily applicable to the beneficiary’s occupation; and (2) how the evidence submitted is “comparable” to the objective evidence required at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) through (8).

In the initial documentation submitted with the petition, the petitioner claimed eligibility under the “comparable evidence” regulation but did not explain why the regulatory criteria are not readily applicable to the beneficiary’s occupation. In response to the RFE, the petitioner claimed eligibility under the “comparable evidence” regulation because “[e]vent planners and managers do their work behind the scenes and therefore are hardly visible or known to the public” and therefore such occupations “do not result in press or awards, for example.” On appeal, the petitioner asserts that comparable evidence is appropriate because “the O-1 criteria listed in the regulations do not apply to the [b]eneficiary’s occupation,” because event planners and managers “are hardly known to the public in general, and only those directly involved in event organization can attest to their role and contributions.”

While the acting director did not specifically address the petitioner’s claim that it has submitted comparable evidence of the beneficiary’s eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(C), nonetheless, the regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for O-1 classification in the beneficiary’s occupation as an event planner

cannot be established by submitting documentation relevant to at least three of the eight criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). In fact, as indicated in this decision, the petitioner has specifically asserted that it is submitting evidence that addresses three of the eight criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B), specifically, at 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(3), (4) and (5). An inability to meet a criterion, however, is not necessarily evidence that the criterion does not apply to the beneficiary's occupation. Moreover, although the petitioner failed to claim any additional criteria, the petitioner has not documented that an event planner could not, for example, earn a high salary or be employed in a critical or essential capacity for an organization with a distinguished reputation. Where an alien is simply unable to meet three of these criteria, the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) does not allow for the submission of comparable evidence.

### C. Conclusion

Based on the foregoing, the petitioner has not submitted qualifying evidence under at least three criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Therefore, the petitioner has failed to demonstrate that the beneficiary satisfies the antecedent regulatory requirement of three types of evidence.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a consideration of the evidence in the context of a final merits determination. However, as discussed above, the petitioner failed to establish eligibility under at least three of the criteria found under the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). Therefore, a final merits determination will not be conducted.<sup>3</sup> The petitioner has not established that the beneficiary is eligible for classification as an alien with extraordinary ability in business.

In visa petition proceedings, the burden of proving eligibility for the benefit sought is with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not satisfied that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>3</sup> The AAO maintains *de novo* review. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding on motion or as a result of litigation, the AAO maintains the jurisdiction to conduct a final merits determination as the official who made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). See also Section 103(a)(1) of the Act; Section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii)(2003); *Matter of Aurelio*, 19 I & N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).